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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

AMERICAN CIVIL LIBERTIES UNION,)
)
 Plaintiff,)
 v.)
 UNITED STATES IMMIGRATION AND)
 CUSTOMS ENFORCEMENT, and UNITED)
 STATES DEPARTMENT OF HOMELAND)
 SECURITY,)
)
 Defendants.)

Case No. 4:23-cv-03450-DMR

**DEFENDANTS' ANSWER AND AFFIRMATIVE
 DEFENSES TO PLAINTIFF'S COMPLAINT**

INTRODUCTION¹

Defendants United States Immigration and Customs Enforcement (“ICE”) and the United States Department of Homeland Security (“DHS”) (collectively, “Defendants”) hereby respond to the Complaint filed by Plaintiff American Civil Liberties Union (“Plaintiff”) on July 11, 2023 (ECF No. 1) as follows:

¹ Defendants have included the headings listed in the Complaint to assist in reading the pleadings and do not admit the accuracy of those headings.

1 1. Paragraph 1 consists of Plaintiff's characterization of this action to which no response is
2 required. To the extent a response is required, Defendants deny the allegations.

3 2. The allegations in Paragraph 2 are not material to the resolution of the claims at issue in
4 this FOIA action and, as such, no response is required. To the extent a response is required, Defendants
5 admit that ICE detains detainees at numerous detention facilities located throughout the United States.
6 Defendants deny any remaining allegations in this paragraph.

7 3. Paragraph 3 consists of Plaintiff's characterization of certain statutes and a judicial
8 decision, which are not material to the resolution of the claims at issue in this FOIA action and, as such,
9 no response is required. To the extent a response is required, Defendants respectfully refer the Court to
10 the cited authorities for a full and accurate statement of their contents and deny any allegations
11 inconsistent therewith.

12 4. The allegations in Paragraph 4 are not material to the resolution of the claims at issue in
13 this FOIA action and, as such, no response is required. To the extent a response is required, Defendants
14 lack knowledge or information sufficient to form a belief about the allegations.

15 5. The allegations in Paragraph 5 are not material to the resolution of the claims at issue in
16 this FOIA action and, as such, no response is required. To the extent a response is required, Defendants
17 lack knowledge or information sufficient to form a belief about the allegations.

18 6. Paragraph 6 consists of Plaintiff's legal conclusions and characterization of certain
19 agency publications, to which no response is required. To the extent a response is required, Defendants
20 admit that ICE detention facilities provide properly equipped law libraries that make law library
21 materials available to detainees in electronic form on computers. Defendants respectfully refer the Court
22 to the cited sources for a full and accurate statement of their contents and deny any allegations
23 inconsistent therewith.

24 7. Paragraph 7 consists of Plaintiff's characterization of the public's alleged interest in the
25 requested records, which is not material to the resolution of the claims at issue in this FOIA action and,
26 as such, no response is required. To the extent a response is required, Defendants lack knowledge or
27 information sufficient to form a belief about the allegations.

10. Defendants admit that as of the date of filing of the Complaint, ICE had not issued a final response to Plaintiff's request.

11. Paragraph 11 consists of Plaintiff’s conclusions of law regarding jurisdiction, to which no response is required. To the extent a response is required, Defendants admit only that this Court has jurisdiction subject to the limitations of the Freedom of Information Act, 5 U.S.C. § 552, et seq. (“FOIA”) and deny the remaining allegations.

12. Paragraph 12 consists of Plaintiff's conclusions of law regarding venue, to which no response is required. To the extent a response is required, Defendants admit that venue is proper in this judicial district.

13. Defendants lack knowledge or information sufficient to form a belief about the allegations in Paragraph 13.

14. Defendants admit that DHS is a federal agency for purposes of the FOIA, that ICE is a component of DHS, and that ICE may have possession of records responsive to Plaintiff's March 30, 2023 FOIA request. Defendants deny any remaining allegations in Paragraph 14.

1 15. Defendants admit that ICE is a federal agency for purposes of the FOIA and is a
2 component of DHS. Defendants admit that ICE may have possession of records responsive to Plaintiff's
3 March 30, 2023 FOIA request, and that ICE has a field office in San Francisco. Defendants deny any
4 remaining allegations in Paragraph 15.

5 **STATUTORY AND LEGAL FRAMEWORK**

6 16. Paragraph 16 consists of Plaintiff's legal conclusions and characterizations of certain
7 judicial decisions, to which no response is required. To the extent a response is required, Defendants
8 respectfully refer the Court to the cited authorities for a full and accurate statement of their contents and
9 deny any allegations inconsistent therewith.

10 17. Paragraph 17 consists of Plaintiff's legal conclusions and characterization of certain
11 judicial decisions, to which no response is required. To the extent a response is required, Defendants
12 respectfully refer the Court to the cited authorities for a full and accurate statement of their contents and
13 deny any allegations inconsistent therewith.

14 18. Paragraph 18 consists of Plaintiff's legal conclusions and characterization of a statute, to
15 which no response is required. To the extent a response is required, Defendants respectfully refer the
16 Court to the cited authorities for a full and accurate statement of their contents and deny any allegations
17 inconsistent therewith.

18 19. Paragraph 19 consists of Plaintiff's legal conclusions and characterization of a statute, to
19 which no response is required. To the extent a response is required, Defendants respectfully refer the
20 Court to the cited authority for a full and accurate statement of its contents and deny any allegations
21 inconsistent therewith.

22 20. Paragraph 20 consists of Plaintiff's legal conclusions and characterization of a statute, to
23 which no response is required. To the extent a response is required, Defendants respectfully refer the
24 Court to the cited authority for a full and accurate statement of its contents and deny any allegations
25 inconsistent therewith.

26 21. Paragraph 21 consists of Plaintiff's legal conclusions and characterization of a statute, to
27 which no response is required. To the extent a response is required, Defendants respectfully refer the

1 Court to the cited authority for a full and accurate statement of its contents and deny any allegations
2 inconsistent therewith.

3 22. Paragraph 22 consists of Plaintiff's legal conclusions and characterization of a statute and
4 certain legislative history, to which no response is required. To the extent a response is required,
5 Defendants respectfully refer the Court to the cited authorities for a full and accurate statement of their
6 contents and deny any allegations inconsistent therewith.

7 23. Defendants admit that ICE may have possession of records responsive to Plaintiff's
8 March 30, 2023 FOIA request and that such records may include materials in electronic format. The
9 remaining allegations in Paragraph 23 consist of Plaintiff's legal conclusions and characterization of
10 certain judicial decisions, to which no response is required. To the extent a response is required,
11 Defendants respectfully refer the Court to the cited authorities for a full and accurate statement of their
12 contents and deny any allegations inconsistent therewith.

13 24. Paragraph 24 consists of Plaintiff's legal conclusions and characterization of a statute, to
14 which no response is required. To the extent a response is required, Defendants respectfully refer the
15 Court to the cited authority for a full and accurate statement of its contents and deny any allegations
16 inconsistent therewith.

17 25. Paragraph 25 consists of Plaintiff's legal conclusions and characterization of a statute and
18 a certain judicial decision, to which no response is required. To the extent a response is required,
19 Defendants respectfully refer the Court to the cited authorities for a full and accurate statement of their
20 contents and deny any allegations inconsistent therewith.

21 26. Paragraph 26 consists of Plaintiff's legal conclusions and characterization of a statute, to
22 which no response is required. To the extent a response is required, Defendants respectfully refer the
23 Court to the cited authority for a full and accurate statement of its contents and deny any allegations
24 inconsistent therewith.

25 **FACTUAL BACKGROUND**

26 27. The allegations in Paragraph 27 are not material to the resolution of the claims at issue in
27 this FOIA action and, as such, no response is required. To the extent a response is required, Defendants

1 respectfully refer the Court to the cited sources for a true and accurate statement of their content and
2 deny any allegations inconsistent therewith.

3 28. The allegations in Paragraph 28 are not material to the resolution of the claims at issue in
4 this FOIA action and, as such no response is required. To the extent a response is required, Defendants
5 admit that ICE detention facilities provide properly equipped law libraries that make law library
6 materials available to detainees in electronic form on computers.

7 29. Paragraph 29 consists of Plaintiff's legal conclusions and characterization of certain
8 agency publications, to which no response is required. To the extent a response is required, Defendants
9 admit that ICE detention facilities provide properly equipped law libraries that make law library
10 materials available to detainees in electronic form on computers. Defendants respectfully refer the Court
11 to the cited sources for a full and accurate statement of their contents and deny any allegations
12 inconsistent therewith.

13 30. Paragraph 30 consists of Plaintiff's legal conclusions and characterization of certain
14 agency publications, to which no response is required. To the extent a response is required, Defendants
15 admit that ICE detention facilities provide properly equipped law libraries that make law library
16 materials available to detainees in electronic form on computers. Defendants respectfully refer the Court
17 to the cited sources for a full and accurate statement of their contents and deny any allegations
18 inconsistent therewith.

19 31. Paragraph 31 consists of Plaintiff's characterization of certain legislative history, which is
20 not material to the resolution of the claims at issue in this FOIA action, to which no response is required.
21 To the extent a response is required, Defendants respectfully refer the Court to the cited authorities for a
22 full and accurate statement of their contents and deny any allegations inconsistent therewith.

23 32. Paragraph 32 consists of Plaintiff's characterization of the public's alleged interest in the
24 requested records, which is not material to the resolution of the claims at issue in this FOIA action, to
25 which no response is required. To the extent a response is required, Defendants lack knowledge or
26 information sufficient to form a belief about the allegations.

35. Paragraph 35 consists of Plaintiff's characterization of the public's alleged interest in the requested records, which is not material to the resolution of the claims at issue in this FOIA action, to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief about the allegations.

36. Defendants admit that Plaintiff submitted a FOIA request to DHS on March 30, 2023, and that Exhibit A is a copy of Plaintiff's March 30, 2023 FOIA request. Defendants respectfully refer the Court to Plaintiff's March 30, 2023 FOIA request for a full and accurate statement of its contents and deny any allegations inconsistent therewith.

38. Defendants admit that Plaintiffs submitted a FOIA request on March 30, 2023 and respectfully refer the Court to Plaintiff's March 30, 2023 FOIA request for a full and accurate statement of its contents and deny any allegations inconsistent therewith.

39. Defendants deny the allegations in Paragraph 39. Defendants respectfully refer the Court to Plaintiff's March 30, 2023 FOIA request for a full and accurate statement of its contents and deny any allegations inconsistent therewith.

1 40. Defendants admit the allegations in Paragraph 40. Defendants respectfully refer the Court
2 to Plaintiff's March 30, 2023 FOIA request for a full and accurate statement of its contents and deny any
3 allegations inconsistent therewith.

4 41. Defendants admit the allegations in Paragraph 41. Defendants respectfully refer the Court
5 to Plaintiff's March 30, 2023 FOIA request for a full and accurate statement of its contents and deny any
6 allegations inconsistent therewith.

7 42. Defendants admit that on April 28, 2023, Plaintiff sent an email to Defendants and that
8 Exhibit B includes a copy of that email. Defendants respectfully refer the Court to Plaintiff's April 28,
9 2023 email for a full and accurate statement of its contents and deny any allegations inconsistent
10 therewith.

11 43. Defendants admit that on May 8, 2023, DHS sent a final response to Plaintiff via email,
12 and that Exhibit C is a copy of that email including its attachment. Defendants respectfully refer the
13 Court to DHS's May 8, 2023 correspondence for a full and accurate statement of its contents and deny
14 any allegations inconsistent therewith.

15 44. Defendants admit that on May 16, 2023, ICE sent an email to Plaintiff acknowledging
16 receipt of Plaintiff's March 30, 2023 FOIA request and that Exhibit D is a copy of that email.
17 Defendants respectfully refer the Court to ICE's May 16, 2023 email for a full and accurate statement of
18 its contents and deny any allegations inconsistent therewith.

19 45. Defendants admit that on May 24, 2023, ICE sent an email to Plaintiff acknowledging
20 receipt of Plaintiff's March 30, 2023 FOIA request and that Exhibit E is a copy of that email.
21 Defendants respectfully refer the Court to ICE's May 24, 2023 email for a full and accurate statement of
22 its contents and deny any allegations inconsistent therewith.

23 46. Defendants admit that on May 31, 2023, Plaintiff sent an email to ICE requesting a
24 review and determination of Plaintiff's fee waiver request and that Exhibit F is a copy of that email.
25 Defendants respectfully refer the Court to Plaintiff's May 31, 2023 email for a full and accurate
26 statement of its contents and deny any allegations inconsistent therewith.

47. Defendants admit that on June 5, 2023, ICE sent an email to Plaintiff and that Exhibit G is a copy of that email. Defendants respectfully refer the Court to ICE's June 5, 2023 email for a full and accurate statement of its contents and deny any allegations inconsistent therewith.

48. Defendants admit that on June 28, 2023, ICE sent a final response to Plaintiff regarding its request for a fee waiver via email and that Exhibit H is a copy of that email including its attachment. Defendants respectfully refer the Court to ICE's June 28, 2023 correspondence for a full and accurate statement of its contents and deny any allegations inconsistent therewith.

49. Defendants admit only that as of the filing of the Complaint ICE had not issued a final response to Plaintiff's March 30, 2023 FOIA request.

CLAIM I (AGAINST DEFENDANTS DHS AND ICE)

5 U.S.C. § 552(a)(6)(A)

Failure to Timely Make a Determination as to Plaintiffs' FOIA Request

50. Defendants incorporate by reference the above paragraphs as if fully set forth herein.

51. Paragraph 51 consists of Plaintiff's legal conclusions, to which no response is required. To the extent a response is required, Defendants deny the allegations.

52. Paragraph 52 consists of Plaintiff's legal conclusions, to which no response is required. To the extent a response is required, Defendants deny the allegations.

53. Paragraph 53 consists of Plaintiff's legal conclusions, to which no response is required. To the extent a response is required, Defendants deny the allegations.

54. Defendants admit that ICE requested an extension of time and that, as of the filing of the Complaint, ICE had not issued a final response to Plaintiff's March 30, 2023 FOIA request. Defendants deny the remaining allegations in this paragraph.

55. Defendants admit only that as of the filing of the Complaint, ICE had not issued a final response to Plaintiff's March 30, 2023 FOIA request. Defendants deny any remaining allegations in this paragraph.

56. Defendants deny the allegations in Paragraph 56.

57. Paragraph 57 consists of Plaintiff's legal conclusions, to which no response is required. To the extent a response is required, Defendants deny the allegations.

DEFENDANTS' ANSWER

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CLAIM II (AGAINST DEFENDANTS DHS AND ICE)

5 U.S.C. § 552(a)(3)(A)-(D)

Failure to Make a Reasonable Effort to Search for and Promptly Release Records

58. Defendants incorporate by reference the above paragraphs as if fully set forth herein.

59. Defendants admit that they are federal agencies for purposes of the FOIA. The remaining allegations in Paragraph 59 consist of Plaintiff's legal conclusions, to which no response is required. To the extent a response is required, Defendants deny the allegations.

60. Defendants admit that ICE may have possession of records responsive to Plaintiff's FOIA request. Defendants deny any remaining allegations in this paragraph.

61. Paragraph 61 consists of Plaintiff's legal conclusions, to which no response is required. To the extent a response is required, Defendants deny the allegations.

62. Defendants deny the allegations in Paragraph 62.

63. Paragraph 63 consists of Plaintiff's legal conclusions, to which no response is required. To the extent a response is required, Defendants deny the allegations.

PRAYER FOR RELIEF

The remainder of the Complaint sets forth Plaintiff's request for relief to which no response is required. To the extent a response is required, Defendants deny that Plaintiff is entitled to the relief requested or to any other relief in this action.

Defendants hereby deny any allegations not otherwise specifically admitted or denied.

DEFENSES

In further answer to Plaintiff's Complaint and as separate defenses, Defendants state as follows:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The FOIA request that is the subject of this lawsuit implicates information protected from disclosure by one or more statutory exemptions or exclusions under FOIA, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

THIRD DEFENSE

1 The Court lacks subject matter jurisdiction over Plaintiffs' requests for relief that exceeds the
2 relief authorized under the FOIA.

3 FOURTH DEFENSE

4 Defendants have conducted and are conducting adequate searches in response to the underlying
5 request under the FOIA, and have not improperly withheld any records under the FOIA.

6 Defendants have insufficient knowledge or information at this time upon which to form a belief
7 as to whether they have additional, as yet unstated, defenses available. Defendants reserve the right to
8 assert additional defenses in the event developments indicate it would be appropriate to do so.

9 To the extent the Complaint refers to or quotes from external documents, statutes, or other
10 sources, Defendants may refer to such materials for their accurate and complete contents in response;
11 however, Defendants' references are not intended to be, and should not be construed to be, an admission
12 as to the substance of the cited materials. Additionally, Defendants' references are not intended to be,
13 and should not be construed to be, an admission that the materials: (a) are correctly cited or quoted by
14 Plaintiffs; (b) are relevant to this, or any other, action; (c) contain accurate information or (d) are
15 admissible in this, or any other, action.

16 WHEREFORE, having fully answered, Defendants respectfully pray that: (1) Plaintiff take
17 nothing by its Complaint; (2) the Complaint be dismissed with prejudice and judgment entered in favor
18 of Defendants; (3) Defendants be awarded their costs and disbursements incurred in defending this
19 matter; and (4) the Court award such other and further relief as it deems just and proper.

20 DATED: September 13, 2023

Respectfully submitted,

21 ISMAIL J. RAMSEY
22 United States Attorney

23 s/ David M. DeVito
24 DAVID M. DEVITO
Assistant United States Attorney

25 *Attorneys for Defendants*
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